Supreme Court, U. S.
FILED
FEB 16 1978
MICHAEL RODAK, JR., CLERK

No. 77-839

In the Supreme Court of the United States

OCTOBER TERM, 1977

STACI SPEIDEL, A/K/A ROSEMARY ROJAS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner contends that a quitclaim deed is not a "certificate of interest in property" and therefore is not a "security" for purposes of the National Stolen Property Act, 18 U.S.C. 2311 *et seq.*

Petitioner and co-defendant Ervin Everett Wright were indicted in the United States District Court for the District of Nebraska on two counts charging that they had transported and caused to be transported in interstate commerce forged securities, consisting of two quitclaim deeds, in violation of 18 U.S.C. 2314. On January 26, 1977, the district court dismissed the indictment on the ground that a quitclaim deed is not a "security" as defined by 18 U.S.C. 2311 (Pet. App. 7-11). The court of appeals reversed the district court's dismissal and remanded the case for further proceedings consistent with its holding that a quitclaim deed is a security under Section 2311 (Pet. App. 1-6).

1. 18 U.S.C. 2314, under which petitioner is charged, prohibits the interstate transportation of falsely made or forged securities. "Securities" are broadly defined in 18 U.S.C. 2311 to "include[] any * * * certificate of interest in property, tangible or intangible * * *."[1] Petitioner contends (Pet. 5) that the quitclaim deeds that she allegedly transported in interstate commerce were not securities, as that term is defined by Section 2311, because they are not considered as such under usual commercial practice.

But as the court of appeals noted (Pet. App. 3), the term "securities" as used in Section 2311 was intended to have an expansive meaning. During the consideration of the legislation that became Section 2311, the definition of securities was amended from a series of examples, prefaced by the phrase "securities means," to an illustrative series of examples, prefaced by the phrase "securities includes." H.R. Rep. No. 1462, 73d Cong., 2d

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[1]Section 2311 defines securities to include:

> * * * any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise; or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing.

Sess. 1 (1934).[2] It would be inconsistent with this liberal intent to restrict the language of the statute where its plain terms would appear to cover an instrument.

And a quitclaim deed does come within the phrase "certificate of interest in property." A quitclaim deed is an express conveyance of whatever interest or title the grantor may have; as such it "certifies" that the grantee has whatever interest in real estate was previously owned by the grantor (see Pet. App. 6). It is therefore reasonably classified as a "certificate of interest in property, tangible or intangible," whose forgery and transportation in interstate commerce the Congress intended to prohibit.[3]

2. The present case does not, in any event, present an issue meriting review by this Court. We have been able to find only two cases—the present one and *United States* v. *Canton*, 470 F. 2d 861 (C.A. 2)—interpreting the phrase

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[2]The term "securities" as used in Section 2311 is also broader in some respects than the term used by the Securities Act of 1933 and the Securities Exchange Act of 1934. For example, the phrase at issue here—"certificate of interest in property, tangible or intangible"—is not used by those Acts. See 15 U.S.C. 77b(1), 78c(a)(10).

[3]Petitioner asserts (Pet. 5-6) that the present case is in conflict with the decision of the Second Circuit in *United States* v. *Canton*, 470 F. 2d 861, 862. In that case, the court held that a motor vehicle registration is not a "certificate of interest in property" under Section 2311, noting in broad language that the phrase "certificate of interest in property" refers to a specific type of instrument issued to participants in joint ventures as evidence of their participation. The Second Circuit has not, however, directly addressed whether a quitclaim deed is a "certificate of interest in property," and it would be premature on the basis of the general language in *Canton* to conclude that that court would hold that a quitclaim deed is not such a certificate. The motor vehicle registration at issue in *Canton* certainly had less claim to be considered a certificate of interest in property than a quitclaim deed, since the registration was not, the Second Circuit held, a certificate of interest at all, but only created a rebuttable presumption of ownership.

"certificate of interest in property," although Section 2311 has been in effect more than 40 years. Further, we have found no other reported cases construing Section 2311 that relate to falsely made, forged, altered or counterfeited deeds. Any divergence in the definition of "certificate of interest in property" between the Second and Eighth Circuits therefore does not present a significant question of federal law meriting consideration by this Court.

Moreover, this case does not merit review by this Court in its present posture—as a petition for review of an interlocutory order remanding the case to the district court for further proceedings. This Court will not usually grant certiorari to review a non-final judgment. See *Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.*, 240 U.S. 251, 258; *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & Aroostook Railroad Co.*, 389 U.S. 327, 328. The present case clearly does not present questions of unusual importance meriting departure from this general rule.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

FEBRUARY 1978.

DOJ-1978-02